

PROVIDING FOR CONSIDERATION OF H.R. 4931,
RETIREMENT SAVINGS SECURITY ACT OF 2002

JUNE 20, 2002.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 451]

The Committee on Rules, having had under consideration House Resolution 451, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration in the House of H.R. 4931, to provide that the pension and individual retirement arrangement provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be permanent, under a modified closed rule. The rule provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The rule provides for consideration of the amendment in the nature of a substitute, printed in this report, if offered by Representative Matsui or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment in the nature of a substitute.

Finally, the rule provides one motion to recommit with or without instructions.

SUMMARY OF AMENDMENT MADE IN ORDER UNDER THE RULE

Matsui: Democratic Substitute. Provides that the sunset included in last year's tax bill would not apply to the pension provisions contained in the bill with the following exceptions. The substitute would modify the \$200,000 compensation limit to provide that this level of compensation is not available to a plan which decreases benefits to non-highly-compensated workers while providing in-

creased benefits to its highly compensated employees. The substitute would modify the top-heavy rules to require that employer matching contributions not be taken into account in determining whether the minimum benefit that must be provided to all non-key employees has been met. In addition, it would indefinitely extend the Section 25B credit for pension contributions by low and moderate income individuals.

The substitute also includes a modification of the million dollar limit on deductible pay, includes changes to the deferred compensation arrangements of corporate insiders, requires the recognition of stock option gains for executives of corporate expatriates, and extends the current golden parachute excise tax to severance payments or other deferred compensation payments made to executives leaving failing companies.

TEXT OF AMENDMENT MADE IN ORDER UNDER THE RULE

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retirement Savings Security Act of 2002”.

TITLE I—PENSION PLAN PROVISIONS

SEC. 101. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS MADE PERMANENT.

(a) **IN GENERAL.**—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new subsection:

“(c) **EXCEPTION.**—Subsections (a) and (b) shall not apply to the provisions of, and amendments made by, subtitles (A) through (F) of title VI (relating to pension and individual retirement arrangement provisions).”

(b) **CONFORMING AMENDMENTS.**—Section 901(b) of such Act is amended—

(1) by striking “and the Employee Retirement Income Security Act of 1974” in the text, and

(2) by striking “OF CERTAIN LAWS” in the heading.

SEC. 102. CREDIT FOR RETIREMENT SAVINGS OF CERTAIN INDIVIDUALS MADE PERMANENT.

Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals and IRA contributions of certain individuals) is amended by striking subsection (h).

SEC. 103. INCREASED COMPENSATION LIMIT NOT TO RESULT IN REDUCED BENEFITS FOR THE NONHIGHLY COMPENSATED.

(a) **IN GENERAL.**—Paragraph (17) of section 401(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(C) **BENEFITS MAY NOT DECREASE.**—Subparagraphs (A) and (B) shall be applied by substituting ‘\$150,000’ for ‘\$200,000’ with respect to a plan for any year if any employee’s benefit under the plan would decrease were the \$200,000 amount used by the plan instead of the \$150,000 amount.”

(b) DEDUCTION LIMITATION.—Subsection (l) of section 404 of such Code is amended by adding at the end the following new sentence: “The preceding sentences of this subsection shall be applied by substituting ‘\$150,000’ for ‘\$200,000’ with respect to a plan for any year if any employee’s benefit under the plan would decrease were the \$200,000 amount used by the plan instead of the \$150,000 amount.”

(c) SIMPLIFIED EMPLOYEE PENSIONS.—Subsection (k) of section 408 of such Code is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

“(9) LOWER COMPENSATION LIMITATION IF BENEFITS DECREASE.—Paragraphs (3)(C) and (6)(D) shall be applied by substituting ‘\$150,000’ for ‘\$200,000’ with respect to a plan for any year if any employee’s benefit under the plan would decrease were the \$200,000 amount used by the plan instead of the \$150,000 amount.”

(d) CERTAIN TAX-EXEMPT ORGANIZATIONS.—Paragraph (7) of section 505(b) of such Code is amended by adding at the end the following new sentence: “The preceding sentences of this subsection shall be applied by substituting ‘\$150,000’ for ‘\$200,000’ with respect to a plan for any year if any employee’s benefit under the plan would decrease were the \$200,000 amount used by the plan instead of the \$150,000 amount.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after the date of the enactment of this Act.

SEC. 104. MATCHING CONTRIBUTIONS NOT TAKEN INTO ACCOUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS UNDER TOP-HEAVY PLAN RULES.

(a) IN GENERAL.—Subparagraph (A) of section 416(c)(2) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after the date of the enactment of this Act.

TITLE II—RESPONSIBLE CORPORATE GOVERNANCE

SEC. 201. PERFORMANCE-BASED COMPENSATION EXCEPTION TO \$1,000,000 LIMITATION ON DEDUCTIBLE COMPENSATION NOT TO APPLY IN CERTAIN CASES.

(a) IN GENERAL.—Paragraph (4) of section 162(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(G) CERTAIN FACTORS NOT PERMITTED TO BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER PERFORMANCE GOALS ARE MET.—Subparagraph (C) shall not apply if, in determining whether the performance goals are met, any of the following are taken into account:

“(i) Cost savings as a result of changes to any qualified employer plan (as defined in section 4972(d)).

“(ii) Excess assets of such a plan or earnings thereon.

“(iii) Any excess of the amount assumed to be the return on the assets of such a plan over the actual return on such assets.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 202. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

(a) **IN GENERAL.**—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

“(a) **IN GENERAL.**—If an employer maintains a defined contribution plan to which employer contributions are made in the form of employer stock and such employer maintains a funded deferred compensation plan—

“(1) compensation of any corporate insider which is deferred under such funded deferred compensation plan shall be included in the gross income of the insider or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

“(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

“(b) **FUNDED DEFERRED COMPENSATION PLAN.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘funded deferred compensation plan’ means any plan providing for the deferral of compensation unless—

“(A) the employee’s rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

“(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

“(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer’s general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

“(2) **SPECIAL RULES.**—

“(A) **EMPLOYEE’S RIGHTS.**—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless—

“(i) the compensation deferred under the plan is paid only upon separation from service, death, or at a specified time (or pursuant to a fixed schedule), and

“(ii) the plan does not permit the acceleration of the time such deferred compensation is paid by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income when deferred.

“(B) CREDITOR’S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

“(i) the employee has no beneficial interest in the trust,

“(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

“(iii) there is no factor (such as the location of the trust outside the United States) that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

“(c) CORPORATE INSIDER.—For purposes of this section, the term ‘corporate insider’ means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

“(d) OTHER DEFINITIONS.—For purposes of this section—

“(1) PLAN INCLUDES ARRANGEMENTS, ETC.—The term ‘plan’ includes any agreement or arrangement.

“(2) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any individual.”

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

“Sec. 409A. Denial of deferral for funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred after the date of the enactment of this Act.

SEC. 203. INCLUSION IN INCOME OF CERTAIN DEFERRED AMOUNTS OF INSIDERS OF CORPORATIONS WHICH EXPATRIATE TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Part II of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

“SEC. 91. UNREALIZED GAIN ON STOCK OPTIONS OF INSIDERS OF CORPORATIONS WHICH EXPATRIATE TO AVOID UNITED STATES INCOME TAX.

“(a) IN GENERAL.—In the case of a corporate insider of any expatriate corporation, the gross income of such insider (for the taxable year during which such corporation becomes an expatriate corporation) shall include as ordinary income the net unrealized built-in gain on options held by such insider to acquire stock in such corporation or in any member of the expanded affiliated group which includes such corporation. Proper adjustments shall be made in the amount of any gain or loss subsequently realized with respect to such options for any amount included in gross income under the preceding sentence.

“(b) DEFINITIONS.—For purposes of this section—

“(1) CORPORATE INSIDER.—The term ‘corporate insider’ means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

“(2) EXPATRIATE CORPORATION.—

“(A) IN GENERAL.—The term ‘expatriate corporation’ means the acquiring corporation in a corporate expatriation transaction.

“(B) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘corporate expatriation transaction’ means any transaction if—

“(I) a nominally foreign corporation (referred to in this subparagraph as the ‘acquiring corporation’) acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

“(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

“(ii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (i) shall be applied by substituting ‘50 percent’ for ‘80 percent’ with respect to any nominally foreign corporation if—

“(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

“(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

“(iii) PARTNERSHIP TRANSACTIONS.—The term ‘corporate expatriation transaction’ includes any transaction if—

“(I) a nominally foreign corporation (referred to in this paragraph as the ‘acquiring corporation’) acquires, as a result of such transaction, directly

or indirectly properties constituting a trade or business of a domestic partnership,

“(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership or related foreign partnerships (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

“(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (ii).

“(iv) SPECIAL RULES.—For purposes of this subparagraph—

“(I) a series of related transactions shall be treated as 1 transaction, and

“(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

“(v) NOMINALLY FOREIGN CORPORATION.—The term ‘nominally foreign corporation’ means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

“(3) NET REALIZED BUILT-IN GAIN.—The term ‘net unrealized built-in gain’ means, with respect to options to acquire stock in any corporation, the amount which would be required to be included in gross income were such options exercised.

“(4) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).”

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end the following new item:

“Sec. 91. Certain deferred amounts of insiders of corporations which expatriate to avoid United States income tax.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to corporate expatriation transactions completed after September 11, 2001, and to taxable years ending after such date.

SEC. 204. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO DEFERRED COMPENSATION PAID BY CORPORATION AFTER MAJOR DECLINE IN STOCK VALUE OR CORPORATION DECLARES BANKRUPTCY.

(a) IN GENERAL.—Section 4999 of the Internal Revenue Code of 1986 (relating to golden parachute payments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) TAX TO APPLY TO DEFERRED COMPENSATION PAID AFTER MAJOR STOCK VALUE DECLINE OR BANKRUPTCY.—

“(1) IN GENERAL.—For purposes of this section, the term ‘excess parachute payment’ includes severance pay, and any other payment of deferred compensation, which is received by a corporate insider after the date that the insider ceases to be employed by the corporation if—

“(A) there is at least a 75-percent decline in the value of the stock in such corporation during the 1-year period ending on such date, or

“(B) such corporation becomes a debtor in a title 11 or similar case (as defined in section 368(a)(3)(A)) during the 180-day period beginning 90 days before such date.

Such term shall not include any payment from a qualified employer plan.

“(2) CORPORATE INSIDER.—For purposes of paragraph (1), the term ‘corporate insider’ means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cessations of employment after the date of the enactment of this Act.